

TERMS.

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DEBATE IN THE SENATE.

PROSPECTIVE PRE-EMPTION BILL.

[Mr. Clay's remarks concluded.]

FRIDAY, JANUARY 20, 1841.

Mr. CLAY again addressed the Senate, in continuation of his speech of yesterday:

It is not my intention to inflict upon the Senate even a recapitulation of the heads of argument which I had the honor to address to it yesterday. On one collateral point I desire to supply an omission as to the trade between this country and France. I stated the fact that, according to the returns of the imports and exports, there existed an unfavorable balance against the United States, amounting, exclusively of what is re-exported, to seventeen millions of dollars; but I omitted another important fact, namely, that, by the laws of France, there is imposed on the raw material imported into that kingdom a duty of twenty francs on every hundred kilograms, equal to about two cents per pound on American cotton, at the present market price. Now what is the fact as to the comparative rate of duties in the two countries? France imposes on the raw product (which is the mere commencement of value in articles which when wrought and finally touched, will be worth two or three hundred fold) a duty of near twenty-five per cent. while we admit, free of duty, or with nominal duties, costly luxuries, the product of French industry and taste, wholly unsusceptible of any additional value by any exertion of American skill and industry. In any thing I have said on this occasion, nothing is further from my intention than to utter one word unfriendly to France. On the contrary, it has been always my desire to see our trade with France increased and extended upon terms of reciprocal benefit. With that view, I was in favor of an arrangement in the tariff of 1832, by which silks imported into the United States from beyond the Cape of Good Hope were charged with a duty of ten per cent. higher than those brought from France and countries this side of the Cape, especially to encourage the commerce with France.

While speaking of France, allow me to make an observation, although it has no immediate or legitimate connexion with anything before the Senate. It is to embrace the opportunity of expressing my deep regret at a sentiment attributed by the public journals to a highly distinguished and estimable countryman of ours in another part of the Capitol, which implied a doubt as to the validity of the title of Louis Philippe to the Throne of France, inasmuch as it was neither acquired by conquest nor descent, and raising a question as to his being the lawful monarch of the French people. It appears to me that, after the memorable revolution of July, in which our illustrious and lamented friend, Lafayette, bore a part so eminent and effectual; and the subsequent hearty acquiescence of all France in the establishment of the Orleans branch of the house of Bourbon upon the throne, the present King has as good a title to his Crown as any of the other sovereigns of Europe have to theirs, and quite as good as any which force or the mere circumstance of birth could confer. And, if an individual so humble and at such a distance as I am, might be allowed to express an opinion on the public concerns of another country and another hemisphere, I would add that no Chief Magistrate of any nation, amidst difficulties, public and personal, the most complicated and appalling, could have governed with more ability, wisdom, and firmness than have been displayed by Louis Philippe. All erisidom owes him an acknowledgment for his recent successful efforts to prevent a war which would have been disgraceful to Christian Europe—a war arising from the inordinate pretensions of an upstart Mahometan Pacha, a rebel against his lawful sovereign and a usurper of his rights—a war which, if once lighted up, must have involved all Europe, and have led to consequences which it is impossible to foresee.

I return to the subject immediately before us.

In tracing the history of that portion of our public domain which was acquired by the war of the Revolution, we should always recollect the danger to the peace and harmony among the members of the confederacy with which it was pregnant. It presented for a long time the ratification of

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the articles of confederation by all the States, some of them refusing their assent until a just and equitable settlement was made of the question of the Crown lands. The argument they urged as to these lands, in a waste and unappropriated state, was, that they had been conquered by the common valor, the common exertions, and the common sacrifices of all the States; that they ought therefore to be the common property of all the States, and that it would be manifestly wrong and unjust that the States within whose limits these Crown lands happened to lie should exclusively enjoy the benefit of them. Virginia, within whose boundaries by far the greater part of these Crown lands were situated, and by whose separate and unaided exertions on the bloody theatre of Kentucky and beyond the Ohio, under the direction of the renowned George Rogers Clarke, the conquest of most of them was achieved, was, to her immortal honor, among the first to yield to these just and patriotic views, and by her magnificent grant to the Union powerfully contributed to restore harmony, and quiet all apprehensions among the several States.

Among the objects to be attained by the cession from the States to the Confederation of these Crown lands, a very important one was to provide a fund to pay the debts of the Revolution. The Senator from New York (Mr. WRIGHT) made it the object of a large part of the argument which he addressed to the Senate, to show the contrary; and so far as the mere terms of the deeds of cession are concerned, I admit the argument was sustained. No such purpose appears on the face of the deeds, as far as I have examined them.

[Mr. WRIGHT here interposed, and said that he had not undertaken to argue that the cessions made by the States to the Union were not for the purpose of extinguishing the public debt, but that they were not exclusively for that purpose.]

It is not material whether they were made for the sole purpose of extinguishing the Revolutionary debt or not. I think I shall be able to show, in the progress of my argument, that, from the moment of the adoption of the Federal Constitution, the proceeds of the public lands ought to have been divided among the States.

But that the payment of the Revolutionary debt was one of the objects of the cession, is a matter of incontestable history.—We should have an imperfect idea of the intentions of the parties if we confined our attention to the mere language of the deeds. In order to ascertain their views we must examine contemporaneous acts, resolutions, and proceedings. One of these resolutions, clearly manifesting the purpose I have stated, has probably escaped the notice of the Senator from New York. It was a resolution of the old Congress, adopted in April, 1783, preceding the financial cession from Virginia, which was in March, 1784.—There had been an attempt to make the cession as early as 1781, but, owing to the conditions with which it was embarrassed, and other difficulties, the cession was not consummated until March, 1784. The resolution I refer to bears a date prior to that of the cession, and must be taken with it, as indicative of the motives which probably operated on Virginia to make, and the Confederation to accept, that memorable grant. I will read it:

Resolved, That as a further mean, as well as hastening the extinguishment of the debts as of establishing the harmony of the United States, it be recommended to the States which have passed no acts towards complying with the resolutions of Congress of the 6th of September and 10th of October, 1780, relative to the cession of territorial claims, to make the liberal cessions therein recommended, and to States which may have passed acts complying with the said resolutions in part only, to revise and complete such compliance.

That was one of the great objects of the cession. Seven of the old thirteen States had waste Crown land within their limits; the other six had none. These complained that what ought to be regarded as property common to them all would accrue exclusively to the seven States, by the operation of the articles of confederation; and, therefore, for the double purpose of extinguishing the Revolutionary debt, and of establishing harmony among the States of the Union, the cession of those lands to the United States was recommended by Congress.

And here let us pause for a moment, and contemplate the proposition of the Senator from South Carolina and its possible consequences. We have seen that the possession by seven States of these public lands, won by the valor of the whole thirteen, was cause of so much dissatisfaction to the other six as to have occasioned a serious impediment to the formation of the Confederacy; and we have seen that, to remove all jealousy and disquietude on that account, in conformity with the recommendation of Congress, the seven States, Virginia taking the lead, animated by a noble spirit of justice and patriotism, ceded the waste lands to the United States for the benefit of all the States. Now what is the measure of the Senator from South Carolina? It is in effect to restore the discordant and menacing state of things which existed in 1783, prior to any cession from the States. It is worse than that. For it proposes that seventeen States shall give up immediately or eventually all their interest in the public lands, lying in nine States, to those nine States.—Now if the seven States had refused to cede at all, they could at least have asserted that they fought Great Britain for these lands as hard as the six. They would have had, therefore, the apparent right of conquest, although it was a common conquest. But the Senator's proposition is to cede these public lands from the States which fought for them in the Revolutionary war to States

that neither fought for them nor had existence during that war. If the apprehension of an appropriation of these lands to the exclusive advantage of the seven States was high preventing the establishment of the Union, can it be supposed that its security and harmony will be unaffected by a transfer of them from seventeen to nine States? But the Senator's proposition goes yet further. It has been shown that it will establish a precedent, which must lead to a cession from the United States of all the public domain, whether won by the sword or acquired by treaties with foreign Powers, to new States as they shall be admitted into the Union.

In the second volume of the laws of the United States will be found the act, known as the funding act, which passed in the year 1790. By the last section of that act the public lands are pledged, and pledged exclusively, to the payment of the Revolutionary debt until it should be satisfied. Thus we find, prior to the cession, an invitation from Congress to the States to cede the waste lands, among other objects, for the purpose of paying the public debt; and, after the cessions were made, one of the earliest acts of Congress pledged them to that object. So the matter stood whilst that debt hung over us. During all that time there was a general acquiescence in the dedication of the public lands to that just object. No one thought of disturbing the arrangement. But when the debt was discharged, or rather when, from the rapidity of the process of its extinction, it was evident that it would soon be discharged, attention was directed to a proper disposition of the public lands. No one doubted the power of Congress to dispose of them according to its sound discretion. Such was the view of President Jackson, distinctly communicated to Congress, in the message which I have already cited.

"As the lands may now be considered as relieved from this pledge, the object for which they were ceded having been accomplished, it is in the discretion of Congress to dispose of them in such way as best to conduce to the quiet, harmony, and general interest of the American people."

Can the power of Congress to dispose of the public domain be more broadly asserted? What was then said about revenue? That it should cease to be a source of revenue! We never hear of the revenue argument but when the proposition is up to make an equal and just distribution of the proceeds. When the favorable, but, as I regard them, wild and squandering projects of gentlemen are under consideration, they are profoundly silent as to that argument.

I come now to an examination of the terms on which the cession was made by the States, as contained in the deeds of cession. And I shall take that from Virginia, because it was in some measure the model deed, and because it conveyed by far the most important part of the public lands acquired from the ceding States. I will first dispose of a preliminary difficulty raised by the Senator from New York. That Senator imagined a case, and then combated it with great force. The case he supposed was, that the Senator from Massachusetts and I had maintained that, under that deed, there was a reversion to the States, and much of his argument was directed to prove that there is no reversion, but that, if there were, it could only be to the ceding States. Now neither the Senator from Massachusetts nor I attempted to erect any such windmill as the Senator from New York has imagined, and he might have spared himself the heavy blows which, like another famed hero, not less valorous than himself, he dealt upon it. What I really maintain and have always maintained is, that according to the terms themselves of the deed of cession, although there is conveyed a common property to be held for the common benefit, there is nevertheless an assignment of a separate use. The ceded land, I admit, is to remain a common fund for all the States, to be administered by a common authority, but the proceeds or profits were to be appropriated to the States in severalty, according to a certain prescribed rule. I contend this is manifestly true from the words of the deed. What are they? "That all the lands within the territory so ceded to the United States, and not reserved for or appropriated to any of the before mentioned purposes, or 'disposed of' in bounties to the officers and 'soldiers of the American Army, shall be 'considered a common fund for the use and benefit of such of the United States as have 'become, or shall become, members of the 'Confederation or federal alliance of the 'said States, Virginia inclusive, according 'to their usual respective proportions in the 'general charge and expenditure, and shall 'be faithfully and bona fide disposed of for 'that purpose, and for no other use or purpose whatsoever."

The territory conveyed was to be regarded as an inviolable fund for the use and benefit of such States as were admitted or might be admitted into the Union, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure. It was to be faithfully and bona fide administered for that sole purpose, and for no other purpose whatever.

Where then is the authority for all those wild, extravagant, and unjust projects, by which, instead of an administration of the ceded territory for all the States and all the people of the Union, it is to be granted to particular States, wasted in schemes of graduation and pre-emption, for the benefit of the trespasser, the alien, and the speculator?

The Senator from New York, pressed by the argument as to the application of the fund to the separate use of the States, deducible from the phrases in the deed, "Virginia inclusive," said that they were

necessary, because without them Virginia would have been entitled to no part of the ceded lands. No! Were they not ceded to the United States, was she not one of those States, and did not the grant to them include her? Why then were the words inserted? Can any other purpose be imagined than that of securing to Virginia her separate or "respective" proportion? The whole paragraph, cautiously and carefully composed, clearly demonstrates that, although the fund was to be common, the title common, the administration common, the use and benefit were to be separate among the several States, in the defined proportions.

The grant was for the benefit of the States, "according to their usual respective proportions in the common charge and expenditure." Bear in mind the date of the deed: it was in 1784—before the adoption of the present Constitution, and whilst the Articles of Confederation were in force. What, according to them, was the mode of assessing the quotas of the different States towards the common charge and expenditure? It was made upon the basis of the value of all the surveyed land, and the improvements, in each State. Each State was assessed according to the aggregate value of surveyed land and improvements within its limits. After that was ascertained, the process of assessment was this: Suppose there were five millions of dollars required to be raised for the use of the General Government, and one million of that five were the proportion of Virginia; there would be an account stated on the books of the General Government with the State of Virginia, in which she would be charged with that million. Then, there would be an account kept for the proceeds of the sales of the public lands; and, if these amounted to five millions of dollars also, Virginia would be credited with one million, being her fair proportion; and thus the account would be balanced. It is unnecessary to pursue the process with all the other States; this is enough to show that, according to the original contemplation of the grant, the common fund was for the separate benefit of the States; and that, if there had been no change in the form of Government, each would have been credited with its share of the proceeds of the public lands in its account with the General Government. Is not this indisputable? But let me suppose that Virginia or any other State had said to the General Government, "I choose to receive my share of the proceeds of the public lands into my separate treasury; pay it to me, and I will provide in some other mode, more agreeable to me, for the payment of my assessed quota of the expenses of the General Government;" can it be doubted that such a demand would have been legitimate and perfectly compatible with the deed of cession? Even under our present system, you will recollect, sir, that, during the last war, any State was allowed to assume the payment of its share of the direct tax, and raise it, according to its own pleasure or convenience, from its own people, instead of the General Government collecting it.

From the period of the adoption of the present Constitution of the United States, the mode of raising revenue, for the expenses of the General Government, has been changed. Instead of acting upon the States, and through them upon the People of the several States, in the form of assessed quotas or contributions, the General Government now acts directly upon the people themselves, in the form of taxes, duties, or excises. Now, as the chief source of revenue raised by this Government is from foreign imports, and as the consumer pays the duty, it is entirely impracticable to ascertain how much of the common charge and general expenditure is contributed by any one State to the Union.

By the deed of cession a great and a sacred trust was created. The General Government was the trustee, and the States were the cestui que trust. According to the trust, the measure of benefit accruing to each State from the ceded lands was to be the measure of burden which it bore in the general charge and expenditure. But, by the substitution of a new rule of raising revenue to that which was in contemplation at the time of the execution of the deed of cession, it has become impossible to adjust the exact proportion of burden and benefit with each other. The measure of burden is lost, although the subject remains which was to be apportioned according to that measure. Who can now ascertain whether any one of the States has received, or is receiving, a benefit from the ceded lands proportionate to its burden in the General Government? Who can know that we are not daily violating the rule of apportionment prescribed by the deed of cession? To me it appears clear that, either from the epoch of the establishment of the present Constitution, or certainly from that of the payment of the Revolutionary debt, the proceeds of the public lands being no longer applied by the General Government according to that rule, they ought to have been transferred to the States upon some equitable principle of division, conforming as near as possible to the spirit of the cessions. The trustee not being able, by the change of Government, to execute the trust agreeably to the terms of the trust, ought to have done, and ought yet to do, that which a Chancellor would decree if he had jurisdiction of the case—make a division of the proceeds among the States upon some rule approximating as near as practicable to that of the trust. And what rule can so well fulfil this condition as that which was introduced in the bill which I presented to the Senate, and which is contained

in my colleague's amendment? That rule is founded on Federal numbers, which are made up of all the inhabitants of the United States other than the slaves, and three-fifths of them. The South, surely, should be the last section to object to a distribution founded on that rule. And yet, if I rightly understood one of the dark allusions of the Senator from South Carolina, (Mr. CALHOUN,) he has attempted to excite the jealousy of the North on that very ground. Be that as it may, I can conceive of no rule more equitable than that compound one, and I think that that will be the judgment of all parts of the country, the objection of that Senator notwithstanding. Although slaves are, in a limited proportion, one of the elements that enter into the rule, it will be recollected that they are both consumers and the objects of taxation.

It has been argued that since the fund was to be a common one, and its administration was to be by the General Government, the fund ought to be used also by that Government to the exclusion of the States separately. But that is a non sequitur. It may be a common fund, a common title, and a common or single administration; but is there any thing, in all that, incompatible with a periodical distribution of the profits of the fund among the parties for whose benefit the trust was created? What is the ordinary case of tenants in common? There the estate is common, the title is common, the defence, against all attacks, is common; but the profits of the estate go to the separate use of, and are enjoyed by, each tenant. Does it therefore cease to be an estate in common?

Again, There is another view. It has been argued, from the fact that the ceded lands in the hands of the trustee were for the common benefit, that that object could be no otherwise accomplished than to use them in the disbursements of the General Government; that the General Government only must expend them. Now, I do not admit that. In point of fact, the General Government would continue to collect and receive the fund, and as a trustee would pay over to each State its distributive share. The public domain would still remain in common. Then, as to the expenditure, there may be different modes of expenditure. One is, for the General Government itself to disburse it, in payments to the Civil list, the Army, the Navy, &c. Another is, by distributing it among the States, to constitute them so many agencies through which the expenditure is effected.

If the General Government and the State Governments were in two different countries; if they had entirely distinct and distant theatres of action, and operated upon different races of men, it would be another case; but here the two systems of Government, although for different purposes, are among the same people, and the constituency of both of them is the same. The expenditure, whether made by the one Government directly, or through the State Governments as agencies, is all for the happiness and prosperity, the honor and the glory, of one and the same People.

The subject is susceptible of other illustrations, of which I will add one or two. Here is a fountain of water held in common by several neighbors, living around it. It is a perennial fountain—deep, pure, copious, and salubrious. Does it cease to be common because some equal division is made by which the members of each adjacent family dip their vessels into it and take out as much as they want? A tract of land is held in common by the inhabitants of a neighboring village. Does it cease to be a common property because each villager uses it for his particular beasts? A river is the common highway of navigation to contemnerous Powers of States. Does it cease to be common because on its bosom are borne vessels bearing the stripes and the stars or the British cross? These, and other examples which might be given, prove that the argument, on which so much reliance has been placed, is not well founded, that, because the public domain is held for the common benefit of the States, there can be no other just application of its proceeds than through the direct expenditures of the General Government.

I might have avoided most of this consumption of time by following the bad example of quoting from my own productions; and I ask the Senate to excuse one or two citations from the report I made in 1834, in answer to the Veto Message of President Jackson, as they present a condensed view of the argument which I have been urging. Speaking of the cession from Virginia, the report says:

"This deed created a trust in the U. States which they are not at liberty to violate. But the deed does not require that the fund should be disbursed in the payment of the expenses of the General Government. It makes no such provision in express terms, nor is such a duty on the part of the States fairly deducible from the language of the deed. On the contrary, the language of the deed seems to contemplate a separate use and enjoyment of the fund by the States individually, rather than a preservation of it for common expenditure. The fund itself is to be a common fund for the use and benefit of such of the United States as have become or shall become members of the Confederation or federal alliance, Virginia inclusive. The grant is not for the benefit of the Confederation, but for that of the several States which compose the Confederation. The fund is to be under the management of the Confederation collectively, and is so far a common fund; but it is to be managed for the use and benefit of the States individually, and is so far a separate fund under a joint management. Whilst there was a heavy debt existing, created by the war of the Revolution, and by a subsequent war, there was a fitness in applying the proceeds of a common fund to the discharge of a common debt, which recommended all that debt being now discharged, and the General Government no longer standing in a division of it among those for whose use and benefit it was originally designed, and whose war required it. And the committee cannot

conceive how this appropriation of it, upon principles of equality and justice among the several States, can be regarded as contrary to either the letter or spirit of the deed."

The Senator from New York, assuming that the whole debt of the Revolution has not yet been paid by the proceeds of the public lands, insists that we should continue to retain the avails of them until a reimbursement shall have been effected of all that has been applied to that object. But the public lands were never set apart or relied upon as the exclusive resource for the payment of the Revolutionary debt. To give confidence to public creditors, and credit to the Government, they were pledged to that object, along with other means applicable to its discharge. The debt is paid, and the pledge of the public lands has performed its office. And who paid what the lands did not? Was it not the People of the United States?—those very People to whose use, under the guardianship of their States, it is now proposed to dedicate the proceeds of the public lands? If the money had been paid by a foreign Government, the proceeds of the public lands, in honor and good faith, would have been bound to reimburse it. But our Revolutionary debt, if not wholly paid by the public lands, was otherwise paid out of the pockets of the People who own the lands; and if money has been drawn from their pockets for a purpose to which these lands were destined, it creates an additional obligation upon Congress to replace the amount so abstracted by distributing the proceeds among the States for the benefit and the reimbursement of the People.

But the Senator from New York has exhibited a most formidable account against the public domain, tending to show, if it be correct, that what has been heretofore regarded, at home and abroad, as a source of great national wealth, has been a constant charge upon the Treasury and a great loss to the country. The credit side, according to his statement, was, I believe, one hundred and twenty millions, but the debit side was much larger.

It is scarcely necessary to remark that it is easy to state an account presenting a balance on the one side or the other, as may suit the taste or views of the person making it up. This may be done by making charges that have no foundation, or omitting credits that ought to be allowed, or by both. The most certain operation is the latter, and the Senator, who is a pretty thorough-going gentleman, has adopted it.

The first item that I shall notice, with which, I think, he improperly debits the public lands, is a charge of eighty odd millions of dollars, for the expense of conducting our Indian relations. Now, if this single item can be satisfactorily expunged, no more need be done to turn a large balance in favor of the public lands. I ask, then, with what color of propriety can the public lands be charged with the entire expense incident to our Indian relations? If the Government did not own an acre of public lands, this expense would have been incurred. The aborigines are here, our fathers found them in possession of this land, these woods, and these waters. The preservation of peace with them, the fulfilment of the duties of humanity towards them, their civilization, education, conversion to Christianity, friendly and commercial intercourse—these are the causes of the chief expenditure on their account, and they are quite distinct from the fact of our possessing the public domain. When every acre of that domain has gone from you, the Indian tribes, if not in the mean time extinct, may yet remain, imploring you, for charity's sake, to assist them, and to share with them those blessings of which, by the weakness of their nature or the cruelty of your policy, they have been stripped. Why, especially, should the public lands be chargeable with that large portion of the eighty odd millions of dollars, arising from the removal of the Indians from the east to the west side of the Mississippi? They protested against it. They entreated you to allow them to remain at the homes and by the side of the graves of their ancestors; but your stern and rigorous policy would not allow you to listen to their supplications. The public domain, instead of being justly chargeable with the expense of their removal, is entitled to a large credit for the vast territorial districts beyond the Mississippi which it furnished, for the settlement of the emigrant Indians.

I feel that I have not strength to go through all the items of the Senator's account, nor need I. The deduction of this single item will leave a net balance in favor of the public lands of between sixty and seventy millions of dollars.

What, after all, is the Senator's mode of stating the account with the public lands? Has he taken any more than a mere counting-house view of them? Has he exhibited anything more than any sub-accountant or clerk might make out in any of the Departments, as probably it was prepared, cut and dry, to the Senator's lands? Are there no higher or more statesmanlike views to be taken of the public lands, and of the acquisitions of Louisiana and Florida, than the account of dollars and cents which the Senator has presented? I have said that the Senator, by the double process of erroneous insertion and unjust suppression of items, has shaped an account to suit his argument, which presents anything but a full and fair statement of the case. And is it not so? Louisiana cost fifteen millions of dollars. And, if you had the power of selling, how many hundred millions of dollars would you now ask for the States of Louisiana, Missouri, and Arkansas—people, land, and all? Is the sovereignty which you acquired of the two provinces of Louisiana and Florida nothing? Are the public buildings and works, the fortifications, cannon and other arms, independent of the public lands, nothing? Is the navigation of the great father of waters, which you secured from the head to the mouth, on both sides of the river, by the purchase of Louisiana, to the

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